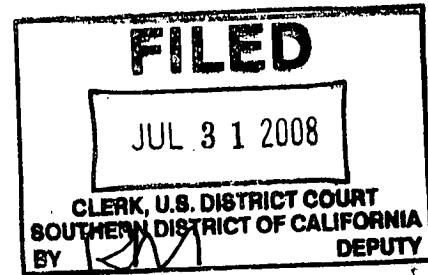


UNITED STATES DISTRICT COURT  
FOR THE  
EASTERN DISTRICT OF CALIFORNIA

OFFICE OF THE CLERK  
2500 Tulare Street  
Fresno, CA 93721



Clerk, USDC  
Southern District of CA  
880 Front Street  
San Diego, CA 92101-8900

'08 CV 1506 W JMA

RE: NIA AASIM vs. M.A. SMELOSKY  
USDC No.: 1:08-CV-01035-GSA

Dear Clerk,

Pursuant to the order transferring the above captioned case to your court, dated July 29, 2008, transmitted herewith are the following documents.

**Electronic Documents: 1 to 4.**

Documents maintained electronically by the district court are accessible through PACER for the Eastern District of California at <https://ecf.caed.uscourts.gov>.

Please acknowledge receipt on the extra copy of this letter and return to the Clerk's Office.

Very truly yours,

July 29, 2008

/s/ M. Verduzco

Deputy Clerk

RECEIVED BY:

\_\_\_\_\_  
Please Print Name

DATE RECEIVED:

NEW CASE  
NUMBER:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I hereby attest and certify on 7/29/08  
that the foregoing document is a full, true  
and correct copy of the original on file in my  
office and in my legal custody.

VICTORIA C. MINOR  
CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

By [Signature] Deputy

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

AASIM NIA,

1:08-CV-01035 GSA HC

Petitioner,

vs.

ORDER OF TRANSFER

M. A. SMELOSKY,

Respondent.

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The federal venue statute requires that a civil action, other than one based on diversity jurisdiction, be brought only in "(1) a judicial district where any defendant resides, if all defendants reside in the same state, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of the property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought." 28 U.S.C. § 1391(b).

1 In this case, Petitioner is challenging the loss of times credits as a result of a prison  
2 disciplinary hearing. Where "the petition is directed to the manner in which a sentence is being  
3 executed, e.g., if it involves parole or time credits claims, the district of confinement is the  
4 preferable forum." Meador v. Cal. Dept. of Corr., 2003 WL 21910917 \*1 (N.D.Cal.), *citing*  
5 Dunne v. Henman, 875 F.2d 244, 249 (9th Cir.1989); Braden v. 30th Judicial Circuit Court, 410  
6 U.S. 484, 497 (1973); In re Phelon, 2002 WL 31618536, \*1 (N.D. Cal.); Thomas v. Hepburn,  
7 2001 WL 505916, \*1 (N.D.Cal.); McKnight v. Forman, 1997 WL 50267, \*1 (N.D. Cal.).  
8 Petitioner is incarcerated at Centinela State Prison in Imperial, California, which is within the  
9 jurisdictional boundaries of the Southern District of California. See 28 U.S.C. § 84(b). Therefore,  
10 in the interest of justice the petition will be transferred to the United States District Court for the  
11 Southern District of California. 28 U.S.C. §§ 1404(a) and 2241(d).

12 Accordingly, IT IS HEREBY ORDERED that this matter is transferred to the United  
13 States District Court for the Southern District of California.

14 IT IS SO ORDERED.

15 Dated: July 28, 2008

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE

CLOSED, HABEAS

**U.S. District Court  
Eastern District of California - Live System (Fresno)  
CIVIL DOCKET FOR CASE #: 1:08-cv-01035-GSA  
Internal Use Only**

(HC) Aasim v. Smelosky  
Assigned to: Magistrate Judge Gary S. Austin  
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 07/23/2008  
Date Terminated: 07/29/2008  
Jury Demand: None  
Nature of Suit: 530 Habeas Corpus  
(General)  
Jurisdiction: Federal Question

**Petitioner**

**Nia Aasim**

represented by **Nia Aasim**  
T-80306  
Centinela State Prison  
P.O. Box 931  
Imperial, CA 92251  
PRO SE

V.

**Respondent**

**M.A. Smelosky**

I hereby attest and certify on 7/29/08  
that the foregoing document is a full, true  
and correct copy of the original on file in my  
office and in my legal custody.

VICTORIA C. MINOR  
CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

By [Signature] Deputy

Date Filed	#	Docket Text
07/21/2008	<u>1</u>	PETITION for WRIT of HABEAS CORPUS by Nia Aasim.(Gil-Garcia, A) (Entered: 07/23/2008)
07/21/2008	<u>2</u>	MOTION to PROCEED IN FORMA PAUPERIS by Nia Aasim. (Gil-Garcia, A) (Entered: 07/23/2008)
07/23/2008		(Court only) ***STAFF NOTES:Case Screened, order granting IFP <u>2</u> submitted to GSA/cd. (Gil-Garcia, A) (Entered: 07/23/2008)
07/23/2008	<u>3</u>	PRISONER NEW CASE DOCUMENTS ISSUED, Consent Deadline set for 8/25/2008 (Attachments: # <u>1</u> Order re Consent) (Gil-Garcia, A) (Entered: 07/23/2008)
07/23/2008		SERVICE BY MAIL: <u>3</u> Prisoner New Case Documents for Magistrate Judge as Presider served on Nia Aasim (Gil-Garcia, A) (Entered: 07/23/2008)
07/29/2008	<u>4</u>	ORDER, CASE TRANSFERRED to Southern District of CA signed by

		Magistrate Judge Gary S. Austin on 7/28/08. Original file, Certified Copy of Transfer Order, and Docket Sheet sent. CASE CLOSED.(Verduzco, M) (Entered: 07/29/2008)
07/29/2008	5	TRANSMITTAL of DOCUMENTS on *7/29/2008* to * Clerk, USDC* *Southern District of CA* *880 Front Street* *San Diego, CA 92101-8900*. *Electronic Documents: 1 to 4. *. (Verduzco, M) (Entered: 07/29/2008)
07/29/2008		SERVICE BY MAIL: 4 Transfer Order served on Nia Aasim. (Verduzco, M) (Entered: 07/29/2008)
07/29/2008		(Court only) ***MOTIONS TERMINATED: 2 Motion to Proceed in Forma Pauperis. (Verduzco, M) (Entered: 07/29/2008)

CLOSED, HABEAS

**U.S. District Court  
Eastern District of California - Live System (Fresno)  
CIVIL DOCKET FOR CASE #: 1:08-cv-01035-GSA**

(HC) Aasim v. Smelosky  
Assigned to: Magistrate Judge Gary S. Austin  
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 07/23/2008  
Date Terminated: 07/29/2008  
Jury Demand: None  
Nature of Suit: 530 Habeas Corpus  
(General)  
Jurisdiction: Federal Question

**Petitioner****Nia Aasim**

represented by **Nia Aasim**  
T-80306  
Centinela State Prison  
P.O. Box 931  
Imperial, CA 92251  
PRO SE

V.

**Respondent****M.A. Smelosky**

Date Filed	#	Docket Text
07/21/2008	<u>1</u>	PETITION for WRIT of HABEAS CORPUS by Nia Aasim.(Gil-Garcia, A) (Entered: 07/23/2008)
07/21/2008	<u>2</u>	MOTION to PROCEED IN FORMA PAUPERIS by Nia Aasim. (Gil-Garcia, A) (Entered: 07/23/2008)
07/23/2008	<u>3</u>	PRISONER NEW CASE DOCUMENTS ISSUED, Consent Deadline set for 8/25/2008 (Attachments: # <u>1</u> Order re Consent) (Gil-Garcia, A) (Entered: 07/23/2008)
07/23/2008		SERVICE BY MAIL: <u>3</u> Prisoner New Case Documents for Magistrate Judge as Presider served on Nia Aasim (Gil-Garcia, A) (Entered: 07/23/2008)
07/29/2008	<u>4</u>	ORDER, CASE TRANSFERRED to Southern District of CA signed by Magistrate Judge Gary S. Austin on 7/28/08. Original file, Certified Copy of Transfer Order, and Docket Sheet sent. CASE CLOSED.(Verduzco, M) (Entered: 07/29/2008)
07/29/2008	<u>5</u>	TRANSMITTAL of DOCUMENTS on *7/29/2008* to * Clerk, USDC* *Southern District of CA* *880 Front Street* *San Diego, CA 92101-8900*. *Electronic Documents: 1 to 4. *. (Verduzco, M) (Entered: 07/29/2008)

07/29/2008		SERVICE BY MAIL: 4 Transfer Order served on Nia Aasim. (Verduzco, M) (Entered: 07/29/2008)
07/31/2008	<u>6</u>	CONSENT to JURISDICTION by US MAGISTRATE JUDGE by Nia Aasim. (Verduzco, M) (Entered: 08/01/2008)

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
08/18/2008 13:56:02			
<b>PACER Login:</b>	ud0077	<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	1:08-cv-01035-GSA
<b>Billable Pages:</b>	1	<b>Cost:</b>	0.08

AO 241 (Rev. 5/85)

**FILED**

PETITION UNDER 28 USC § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

JUL 21 2008

<b>United States District Court</b>		District <u>Eastern District</u>	CLERK, U.S. DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA
Name <b>Aasim Nia</b>	Prisoner No. <b>T80306</b>	BY <b>C. STEVE</b>	Case No.
Place of Confinement <b>Centinela State Prison</b> <b>P.O. Box 931</b> <b>Imperial, CA. 92251</b>			
Name of Petitioner (include name under which convicted)  <b>Aasim Nia</b>		Name of Respondent (authorized person having custody of petitioner) <b>1:08 CV 01035 GSA HC</b> <b>M. A. Smelosky</b>	
The Attorney General of the State of: <b>California</b>			

**PETITION**

1. Name and location of court which entered the judgment of conviction under attack The issue under  
attack is a improper prison disciplinary hearing.
2. Date of judgment of conviction N/A 11/21/06
3. Length of sentence N/A Lost thirty days of good time credit.
4. Nature of offense involved (all counts) Prison Rule Violation 3041(a) specific act  
committed refusing to work.
5. What was your plea? (Check one)
  - (a) Not guilty ☒
  - (b) Guilty ☐
  - (c) Nolo contendere ☐
 If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:  
N/A
6. If you pleaded not guilty, what kind of trial did you have? (Check one) N/A
  - (a) Jury ☐
  - (b) Judge only ☐
7. Did you testify at the trial? N/A  
Yes ☐ No ☐
8. Did you appeal from the judgment of conviction?  
Yes ☒ No ☐



AO 241 (Rev. 5/85)

9. If you did appeal, answer the following:

(a) Name of court Superior Court of California County of Kings

(b) Result Petition was denied

(c) Date of result and citation, if known October 24, 2007

(d) Grounds raised 14 Amendment U.S. Constitutional due process violations

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

(1) Name of court Court of Appeal of the State of California

(2) Result Petition was denied

(3) Date of result and citation, if known January 11, 2008

(4) Grounds raised 14 Amendment U.S. Constitutional due process violations

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

(1) Name of court N/A

(2) Result N/A

(3) Date of result and citation, if known N/A

(4) Grounds raised N/A

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court N/A

(2) Nature of proceeding N/A

(3) Grounds raised N/A

AO 241 (Rev. 5/85)

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒(5) Result N/A(6) Date of result N/A

(b) As to any second petition, application or motion give the same information:

(1) Name of court N/A(2) Name of proceeding N/A(3) Grounds raised N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒(5) Result N/A(6) Date of result N/A

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☒ No ☐(2) Second petition, etc. Yes ☒ No ☐(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:N/A

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

AO 241 (Rev. 5/85)

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Petitioner was denied his 14 Amendment U.S. Constitutional Right to due process of law. To call witnesses.

Supporting FACTS (state *briefly* without citing cases or law): Petitioner requested to call Correctional Supervisor Cook Earnshaw, inmate Reed, and inmate Carrie as witnesses at his disciplinary hearing and was denied without a penalogical justification.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

B. Ground two: Petitioner was denied his 14 Amendment U.S. Constitutional Right to due process of law, to question a witness at his disciplinary hearing.

Supporting FACTS (state *briefly* without citing cases or law): Petitioner requested to ask questions to the reporting employee, and petitioner request was denied by the senior hearing official.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

AO 241 (Rev. 5/85)

C. Ground three: Petitioner was denied his 14 Amendment U.S. Constitutional Right to due process of law, to have the disciplinary decision base upon a complete record.

Supporting FACTS (state *briefly* without citing cases or law): Petitioner requested to call C/O J. Campbell as a witness at his disciplinary hearing. Petitioner's request was granted. However, C/O J. Campbell statement was never included in the fact finding portion of the disciplinary hearing, nor was there any indication that C/O J. Campbell was present at petitioner's disciplinary hearing.

D. Ground four: Petitioner was denied his 14 Amendment U.S. Constitutional Right to due process of law, to be heard by a fair and impartial decision maker.

Supporting FACTS (state *briefly* without citing cases or law): The Senior Hearing Official received independent knowledge of the incident in question due to the fact the Senior Hearing Official reported to 3A dining hall on the day in question. Also the Senior Hearing Official was the Senior Hearing Official in the other five inmates disciplinary hearing who was accused violating the same rule at the same date, time, and location.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: N/A

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?  
Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing N/A

(b) At arraignment and plea N/A

**Ground five:** Petitioner was denied his 14 Amendment U.S. Constitutional Right to due process of law, to be found guilty by a preponderance of evidence.

**Supporting facts:** Petitioner was found guilty of refusal to work. In reviewing the evidence in the light most favorable to the respondent, there isn't any evidence sufficient enough to support a guilty finding.

AO 241 (Rev. 5/85)

(c) At trial N/A(d) At sentencing N/A(e) On appeal N/A(f) In any post-conviction proceeding N/A(g) On appeal from any adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒(a) If so, give name and location of court which imposed sentence to be served in the future: N/A(b) Give date and length of the above sentence: N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

July 14, 2008  
Date

*Osmin Miao*

Signature of Petitioner

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

Sacramento Clerk's Office  
501 "I" Street , Suite 4-200  
Sacramento, CA 95814  
916-930-4000

Fresno Clerk's Office  
2500 Tulare Street , Suite 1501  
Fresno, CA 93721  
559-499-5600

July 23, 2008

Case Number: 1:08-CV-01035-GSA

---

Case Title: NIA AASIM, vs. M.A. SMELOSKY,

---

Dear Litigant,

You are hereby notified that the above case number has been assigned to your action. You are to include it on all correspondence (e.g., letters, filings, and inquiries) sent to the court. Failure to do so results in delayed processing of your documents.

All matters in this action shall be sent to the following address until further notice:

Office of the Clerk  
United States District Court  
Eastern District of California  
2500 Tulare Street , Suite 1501  
Fresno, CA 93721

For timely processing of your filings or correspondence, please comply with our Local Rules of Court, in particular:

**Local Rule 5-133 (modified)** You are not required to send this court an original plus one copy of all documents submitted for filing (e.g., pleadings, motions, correspondence, etc.). You are only required to send this court the original for filing. No extra copies are required. However, if you desire to receive a conformed copy for your records, you must send the original plus one (1) copy and a pre-addressed postage-paid envelope for us to return your copy to you.

**Local Rules 30-250, 33-250, 34-250 and 36-250** Discovery requests or responses should not be submitted to the court unless they are relevant and necessary to support or oppose a motion at issue before the court.

**Local Rule 5-135** Once the defendant(s) have served a responsive pleading, you are under an ongoing duty to serve them with copies of all documents you submitted to the court. A proof of service shall be attached to the original of any document lodged or filed with the court, showing the date, manner and place of service. A sample proof of service is attached.

**Local Rule 7-130 (modified)** Documents submitted to this court may be either typewritten or handwritten but must be legible, and writing shall be on one (1) side of the page only.

**Local Rule 7-132** Every document submitted to the court must include your name, address and prisoner identification number in the upper left hand corner of the first page.

**Local Rules 83-182** Each party appearing in propria persona is under a continuing duty to notify the Clerk and all other parties of any change of address by filing separate notice; absent such notice, service at prior address shall be fully effective. A sample Notice of Change of Address form is attached.

**Other Provisions:**

A complete copy of the Local Rules should be available in the prison library. We do not provide individual copies to litigants.

**Request for Case Status** The court will notify you as soon as any action is taken in your case. Due to the large number of civil actions pending before the court, **THE CLERK IS UNABLE TO RESPOND IN WRITING TO INDIVIDUAL INQUIRES REGARDING THE STATUS OF YOUR CASE.** As long as you keep the court apprised of your current address, you will receive all court decisions which might affect the status of your case.

**Copy Work** The Clerk's Office does not provide copies of documents to parties. Copies of documents may be obtained from the Attorney's Diversified Service (ADS) by writing to them at: 741 N. Fulton Street, Fresno CA 93728, or by phoning 800-842-2695. The court will provide copies of docket sheets at \$0.50 per page. Note: In Forma Pauperis status does not include the cost of copies.

**Proposed Orders** Parties are not required to submit a proposed order when filing a motion. If a proposed order is submitted, the court may disregard the order and prepare its own order.

As noted, the requirements set forth in Local Rule 5-135 and 7-130 have been modified in this letter. These modifications apply to civil rights and habeas cases filed in the Fresno Division of the Eastern District of California by prisoners proceeding pro se (without counsel).

Victoria C. Minor  
Clerk of Court  
United States District Court

by: /s/ A. Gil-Garcia

Deputy Clerk



**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

\_\_\_\_\_  
v.

**Case Number:**

\_\_\_\_\_  
**PROOF OF SERVICE**

\_\_\_\_\_  
I hereby certify that on \_\_\_\_\_, I served a copy  
of the attached \_\_\_\_\_,  
by placing a copy in a postage paid envelope addressed to the person(s) hereinafter  
listed, by depositing said envelope in the United States Mail at

\_\_\_\_\_  
(List Name and Address of Each  
Defendant or Attorney Served)

**I declare under penalty of perjury that the foregoing is true and correct.**

\_\_\_\_\_  
(Signature of Person Completing Service)

Name: \_\_\_\_\_

I.D. #: \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

\_\_\_\_\_  
(Plaintiff/Petitioner)

v.

**Case Number:**

\_\_\_\_\_  
(Defendant(s)/Respondent)

**NOTICE OF CHANGE  
OF ADDRESS**

\_\_\_\_\_/

**PLEASE TAKE NOTICE THAT (print name)** \_\_\_\_\_

hereby submits a notice of change of address in the above – entitled case as follows:

**OLD ADDRESS:** \_\_\_\_\_

\_\_\_\_\_

**NEW ADDRESS:** \_\_\_\_\_

\_\_\_\_\_

DATED: \_\_\_\_\_

\_\_\_\_\_  
**Signature of Plaintiff/Petitioner**

**YOU MUST FILE AN ORIGINAL CHANGE OF ADDRESS  
FORM IN EACH OF YOUR OPEN CASES**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

NIA AASIM,

Plaintiff(s)/Petitioner(s),

Case No. 1:08-CV-01035-GSA

vs.

ORDER RE CONSENT  
OR REQUEST FOR REASSIGNMENT

M.A. SMELOSKY,

Defendant(s)/Respondents(s).

This case was randomly assigned to Magistrate Judge Gary S. Austin. Without the written consent of the parties presently appearing pursuant to 28 U.S.C. Sec. 636(c), a magistrate judge cannot conduct all proceedings and enter judgment in this case with direct review by the Ninth Circuit Court of Appeals, in the event an appeal is filed. If a party declines to consent and the case is assigned to a district judge, the assigned magistrate judge shall continue to perform all duties as required by Eastern District Local Rule 72-302.

Accordingly, within 30 days, the parties shall complete and return this form to the court.

IT IS SO ORDERED.

Dated: 7/23/08/s/ - Gary S. Austin

United States Magistrate Judge

**IMPORTANT:** You must check and sign only one section of this form and return it to the Clerk's Office within 30 days. The complaint/petition will not be reviewed by the court until plaintiff/petitioner has signed and returned this form. Note: This form must be completed and returned regardless of the choice exercised by any other party.

☐ **CONSENT TO JURISDICTION OF UNITED STATES MAGISTRATE JUDGE**

The undersigned hereby voluntarily consents to have a United States Magistrate Judge conduct all further proceedings in this case.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

( ) Plaintiff/Petitioner ( ) Defendant/Respondent ( ) Counsel for \*

☐ **DECLINE OF JURISDICTION OF UNITED STATES MAGISTRATE JUDGE AND  
REQUEST FOR REASSIGNMENT TO UNITED STATES DISTRICT JUDGE**

The undersigned declines to consent to the United States Magistrate Judge assigned to this case and requests random assignment to a United States District Judge.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

( ) Plaintiff/Petitioner ( ) Defendant/Respondent ( ) Counsel for \*

\*If counsel of record, list name of each party responding: \_\_\_\_\_

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIANIA AASIM,

Plaintiff(s)/Petitioner(s),

Case No. 1:08-CV-01035-GSA

vs.

ORDER RE CONSENT  
OR REQUEST FOR REASSIGNMENT**FILED**

JUL 31 2008

M.A. SMELOSKY,

Defendant(s)/Respondent(s).

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY [Signature]  
CITY CLERK

This case was randomly assigned to Magistrate Judge Gary S. Austin. Without the written consent of the parties presently appearing pursuant to 28 U.S.C. Sec. 636(c), a magistrate judge cannot conduct all proceedings and enter judgment in this case with direct review by the Ninth Circuit Court of Appeals, in the event an appeal is filed. If a party declines to consent and the case is assigned to a district judge, the assigned magistrate judge shall continue to perform all duties as required by Eastern District Local Rule 72-302.

Accordingly, within 30 days, the parties shall complete and return this form to the court.

IT IS SO ORDERED.

Dated: 7/23/08/s/ - Gary S. Austin

United States Magistrate Judge

**IMPORTANT:** You must check and sign only one section of this form and return it to the Clerk's Office within 30 days. The complain/petition will not be reviewed by the court until plaintiff/petitioner has signed and returned this form. Note: This form must be completed and returned regardless of the choice exercised by any other party.

☒ **CONSENT TO JURISDICTION OF UNITED STATES MAGISTRATE JUDGE**

The undersigned hereby voluntarily consents to have a United States Magistrate Judge conduct all further proceedings in this case.

Date: 7/27/08Signature: Aasim NiaPrint Name: AASIM NIA☒ Plaintiff/Petitioner ( ) Defendant/Respondent ( ) Counsel for \*☐ **DECLINE OF JURISDICTION OF UNITED STATES MAGISTRATE JUDGE AND  
REQUEST FOR REASSIGNMENT TO UNITED STATES DISTRICT JUDGE**

The undersigned declines to consent to the United States Magistrate Judge assigned to this case and requests random assignment to a United States District Judge.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

( ) Plaintiff/Petitioner ( ) Defendant/Respondent ( ) Counsel for \*

\*If counsel of record, list name of each party responding: \_\_\_\_\_

JS44

(Rev. 07/89)

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

## I (a) PLAINTIFFS

Aasim Nia

## DEFENDANTS

Smelosky, et al

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF  
(EXCEPT IN U.S. PLAINTIFF CASES)

Imperial

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND

FILED

JUL 31 2008

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY *[Signature]* DEPUTY

## (c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Aasim Nia  
PO Box 931  
Imperial, CA 92251  
T-80306

## ATTORNEYS (IF KNOWN)

'08 CV 1506 W JMA

## II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question  
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX (For Diversity Cases Only) - ~~FOR PLAINTIFF AND ONE BOX FOR DEFENDANT~~)

- |   | PT                         | DEF                        |   | PT                         | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

## V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act 29 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. <input type="checkbox"/> Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(p)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input checked="" type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights			

## VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☒ 5 Transferred from another district (specify) *EASTERN CA* ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.e.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

## VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE

7/31/2008

SIGNATURE OF ATTORNEY OF RECORD

*R. Melley*